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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ELISHA SHEPHERD,

Plaintiff,

vs.

MILTON J. JAKEWAY and the
UNITED STATES OF AMERICA,

Defendants.

Case No. 3:01-cv-00333-JKS

MOTION FOR LEAVE OF COURT

The United States and Milton Jakeway, through counsel, move for leave of court to file a motion addressing whether attorney fees are available in a *Bivens* case brought against a federal employee in his individual capacity. The parties have privately discussed this issue and disagree on whether a Plaintiff can receive attorney fees from the government when she prevails in a *Bivens* case. Both

parties agree that settlement is possible once a decision about the availability of attorney fees is reached, and without a decision, no settlement is possible. As the Plaintiff has established liability in the *Bivens* case and must be awarded something in damages, a petition for fees is inevitable. The parties believe that if the court decided this strictly legal issue before trial, we could avoid the expense and time of trial. Counsel is mindful of the November 27, 2006, trial date, and has lodged the proposed "Motion to Establish the Law Regarding the Availability of an Attorney Fee Award" to show that there will be no delay. The government asks leave of court to file it.

Respectfully requested this 29th day of September, 2006, in Anchorage, Alaska.

NELSON P. COHEN
United States Attorney

s/ Susan J. Lindquist
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006,
a copy of the foregoing Motion for Leave
of Court was served electronically on
Yale H. Metzger, and by U. S. Mail on:

LeRoy E. DeVeaux.
701 W. 41st Ave., Suite 201
Anchorage, AK 99503-6604

s/ Susan J. Lindquist